

CALIFORNIA COASTAL COMMISSION

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W12b

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COASTAL DEVELOPMENT PERMIT REVISED FINDINGS

Application number3-04-009, Beardsley Mixed-Use Project

Applicant.....Gregory P. Beardsley (represented by George Ash, Architect)

Project location201 Cannery Row, City of Monterey (Monterey County)

Project description.....Construction of 5 residential condominium units, 674 square feet of retail commercial space, and 5 basement parking spaces on a 4,750 square foot lot.

Local approval.....City Council approval 1/6/04.

File documents.....Approved Mitigated Negative Declaration 1/6/04; Preliminary Archaeological Reconnaissance for Assessor's Parcel 001-032-005, in Monterey, Monterey County California (Doane and Breschini, 3/31/2003)

Staff recommendation ...Approval

Commissioners Eligible to Vote: Reilly, Burke, Potter, Orr, Albert, Kruer, Caldwell, Kram, Neely, Iseman, Peters

Summary: On July 15, 2004, the Commission approved this mixed use project on Cannery Row in the City of Monterey with one change to Special Condition #1. The Commission approved the Applicant's proposal to construct 5 residential units, rather than limiting the number to 3 units as originally recommended by staff. Revisions to the Findings to reflect this Commission action are on page 3 (Special Condition #1), and pages 8 and 9.



California Coastal Commission
August 11, 2004 Meeting in San Pedro

Staff: S. Craig Approved by:

Staff Report Contents

I. Staff Recommendation on CDP Application.....	2
II. Conditions of Approval	3
A. Standard Conditions.....	3
B. Special Conditions	3
III. Recommended Findings and Declarations.....	4
A. Project Description	4
1. Project Location & Description	4
B. Standard of Review	5
C. Coastal Development Permit Determination	5
1. Visitor Serving Use/Parking	5
2. Water Supply	8
3. Water Quality.....	10
4. Archaeological Resources.....	11
D. California Environmental Quality Act (CEQA)	12
IV. Exhibits	
Exhibit 1: City Location Map	
Exhibit 2: Photograph of Project Site	
Exhibit 3: Project Plans	
Exhibit 4: LUP Archaeology Map	
Exhibit 5: City's Conditions of Approval	
Exhibit 6: Correspondence from Applicant's Representative	
Exhibit 7: 1997 LUP Amendment Findings	

I. Staff Recommendation on CDP Application

The staff recommends that the Commission, after public hearing, **approve** a coastal development permit for the proposed development subject to the standard and special conditions below.

Motion. I move that the Commission approve Coastal Development Permit Number 3-04-009 pursuant to the staff recommendation.

Staff Recommendation of Approval. Staff recommends a **YES** vote. Passage of this motion will result in approval of the coastal development permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Approve a Coastal Development Permit. The Commission hereby approves the coastal development permit on the grounds that the development, as conditioned, will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the coastal



development permit complies with the California Environmental Quality Act because either: (1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment; or (2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse effects of the amended development on the environment.

II. Conditions of Approval

A. Standard Conditions

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

B. Special Conditions

1. **MODIFIED PROJECT PLANS. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the Applicant shall submit revised plans to the Executive Director for review and approval. The revised plans shall include a maximum of 5 residential condominium units in the project, 674 square feet of ground-floor commercial space, and 5 on-site parking spaces.
2. **EVIDENCE OF WATER AVAILABILITY. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the Applicant shall submit written evidence to the Executive Director for review and approval that adequate water, which shall be provided only by and



through the municipal water distribution system regulated by the California American Water Company in the City of Monterey according to the allocation procedures of the City and the Monterey Peninsula Water Management District (or its successor), is available for the project. All relevant agency approvals, including approval from the Monterey County Public Health Department, if required, shall be provided.

3. **STORM DRAIN MAINTENANCE. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the Applicant will submit to the Executive Director for review and approval a maintenance plan for the two storm drains located in the underground garage. This maintenance plan shall ensure that these drainage devices continue to function as designed and intended for the life of the project. The plan shall provide for inspection, cleaning and repairing of the two storm drains annually prior to the start of the rainy season. Additional inspections shall occur after storms as needed throughout the rainy season. Repairs, modifications, or installation of additional filtering devices, as needed, shall be carried out prior to the next rainy season.
4. **DRAINAGE PLANS. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the Applicant shall submit to the Executive Director a drainage plan that provides for onsite retention of building runoff that meets low-impact design standards. All retained runoff shall be used onsite. Examples of onsite use include, but are not limited to, development of a rooftop garden and/or installation of cisterns, from which collected rainwater will be used for onsite landscaping or other onsite use. This onsite drainage system shall be maintained for the life of the project.

III. Recommended Findings and Declarations

The Commission finds and declares as follows:

A. Project Description

1. Project Location & Description

The proposed project is located at the inland southwest corner of Cannery Row and Reeside Avenue in the City of Monterey (see Exhibits 1-2). The proposed four-story project consists of five residential condominium units, 674 square feet of retail commercial area, and five basement parking spaces on a 4,750 square foot lot (the City granted a parking adjustment to waive two additional required parking spaces). The project also calls for the removal of two acacia trees. See Exhibit 3 for project plans. The breakdown of the development is as follows:



Parking/Basement: 3,705 s.f.
Unit #1 Retail/ 1st Floor: 674 s.f.
Total 1st Floor/Basement: 4,379 s.f.

Unit #2 Condo/2nd Floor: 1,304 s.f.
Unit #3 Condo/2nd Floor: 1,650 s.f.
Common Area/2nd Floor: 850 s.f.
Total 2nd Floor: 3,804 s.f.

Unit #4 Condo/3rd Floor: 1,304 s.f.
Common Area/3rd Floor: 850 s.f.
Unit #5 Condo/3rd Floor: 1,650 s.f.
Total 3rd Floor: 3,804 s.f.

Unit #6 Condo/4th Floor: 1,750 s.f.
Unit #6 Exit Area/4th Floor: 850 s.f.
Total 4th Floor: 2,600 s.f.

TOTAL BUILDING AREA: 14,587 s.f.

B. Standard of Review

This area of the City of Monterey falls within the coastal zone. The Cannery Row Land Use Plan (LUP) was effectively certified in 1981. In February 1997, the Commission approved LUP Amendment No. 1-97, which allows a limited amount of residential use to be located above first floor visitor-serving commercial uses on Cannery Row. However, several other components of the Local Coastal Program (LCP) (including one land use segment and the implementation plan) are not yet certified. Thus, the City does not have a fully certified LCP. Therefore, the LUP at this stage of the certification process is advisory only and the standard of review for the project is the Coastal Act.

C. Coastal Development Permit Determination

1. Visitor Serving Use/Parking

The following Coastal Act policies protect recreational and visitor-serving facilities along the California coast:

30213 (in part). *Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.*

30221. *Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

30222. *The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.*



30252 (in part). *The location and amount of new development should maintain and enhance public access to the coast by... (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation...*

Cannery Row LUP Visitor Serving Commercial Uses policy h. states:

h. Mixed use projects consisting of residential use on upper floors above visitor-serving commercial are allowed as conditional uses in the visitor-serving commercial use area at a maximum density of 30 units per acre. The maximum number of residential units associated with mixed use projects developed throughout the Cannery Row coastal zone planning area shall not exceed a total of 183 units. Conversion of existing or previously approved visitor accommodation facilities is prohibited.

Cannery Row Parking policy h. states:

h. For mixed-use projects, which are not shown on Table 4, first floor visitor serving commercial development shall be required to provide 1 space per 400 square feet for the first 1,000 square feet of floor area and 1 space per 500 square feet for the balance. The residential component of mixed use projects located above first floor visitor serving commercial shall be required to provide a minimum of one on-site parking space for every residential unit to be developed. The City of Monterey shall require more than one on-site parking space per residential unit if necessary to maintain adequate visitor parking opportunities in the Cannery Row planning area. Additional bedrooms may require additional parking spaces as determined on a case-by-case basis.

Cannery Row is a highly popular destination for visitors to California's central coast. Attractions such as the Monterey Bay Aquarium, world known scuba diving sites, and the Monterey Bay Coastal Trail draw people from near and far to experience coastal access, recreation, and educational opportunities. Cannery Row's proximity to the Monterey City Harbor and Custom House Plaza, as well as its history as the site of California's major sardine canneries, add to its desirability as a recreational and historical destination. As a result of Cannery Row's popularity, there is a great demand for parking, and traffic circulation can be strained during peak visitor periods.

In 1997 the Commission approved an amendment to the Cannery Row Land Use Plan, which added mixed-use projects as an allowable conditional use within areas designated as visitor-serving commercial in the LUP. Such mixed-use projects allow for the development of residential units above first floor levels; first floor levels would remain designated visitor-serving commercial. According to information provided by the City at the time the amendment was submitted, the amendment would assist the City in meeting its Housing Element goals, while still maintaining a high-degree of visitor-serving qualities along Cannery Row.

As submitted, the amendment did not contain any specific limitations on the amount of residential development that would be allowed to occur within the Cannery Row coastal planning area. Nor did the amendment contain specific requirements for the provision of on-site parking to ensure that residential



development would not consume limited parking capacity needed for coastal recreation. Without such limitations, the proposed amendment had the potential to displace visitor-serving uses with residential development and result in the conversion of existing or approved (but not yet constructed) overnight accommodations for visitors to residential use; consume limited water supplies needed to accommodate future development of visitor-serving or coastal dependent uses; diminish parking needed to serve coastal access and recreation; and increase traffic and circulation problems by adding an additional land use at an unspecified intensity.

The City's (uncertified) zoning ordinance at that time allowed for mixed-use projects to exceed 30 units per acre if the Planning Commission made certain findings. To ensure that the amendment would not have an adverse impact on coastal access and recreation, the Commission modified the amendment by requiring that specific mixed-use projects be required to conform to the 30-unit per acre standard, with no exception for increased density, if certain findings were made (see Exhibit 7 for the amendment findings).

As submitted, the amendment also did not include a limitation on the maximum number of residential units that would be allowed on Cannery Row. To address Commission staff's concerns, the City evaluated the amount of vacant and underdeveloped land within the Cannery Row coastal zone to reliably estimate the number of new residential units that could be accommodated at a maximum density of 30 units per acre. The City found this number to be 183 units. With these data, the Commission also modified the amendment to put a limit of 183 residential units in the Cannery Row LUP area (at this time the number of approved residential units in Cannery Row is 56, including this project) and to disallow the conversion to residential use of existing or previously approved overnight accommodations for visitors (see Visitor Serving Commercial Uses policy h. above). Additionally, the Commission modified the amendment to require parking standards for mixed-use projects, as detailed in Cannery Row Parking policy h. above. The City adopted these modifications.

The project as submitted includes 5 residential condominium units on a 4,750 square foot lot. This is a density of approximately 45 residential units per acre,¹ which is 50% greater than the 30 units per acre maximum density allowed by the Commission modification in the certified Cannery Row Land Use Plan, as shown in Visitor Serving Commercial Uses policy h. above. In addition, certified LUP Parking policy h. requires that the project provide a minimum of 7 parking spaces (2 for the commercial component and a total of 5 for the residential component). The proposed project includes only 5 parking spaces. Thus, there is a parking deficit of 2 spaces.

A letter from the Applicant's representative (see Exhibit 6) notes that the City's mixed-use zoning ordinance allows density to exceed 30 units per acre if certain findings are made by the Planning Commission. The City's zoning ordinance, however, is not certified. Also, as discussed above, the certified Cannery Row LUP was specifically modified by the Commission in 1997 to limit residential density along Cannery Row to 30 units per acre, with no exception to allow for increased density

¹ 4,750 square feet x 1 acre/43,560 square feet = .11 acre (size of project site); 5 units/.11 acre = x units/1 acre; .11x=5; x=5/.11=45



beyond 30 units per acre. The letter also points out that two projects have been approved on vacant and/or underdeveloped parcels that were used to determine the limit of 183 residential units along Cannery Row, and that these approved projects include a residential density much less than 30 units per acre. The implication in the letter is that because these other sites do not include a maximum of 30 residential units per acre, that the proposed project should be able to exceed the maximum allowable density. There are, however, a number of problems with this argument. First, although the two properties have received local approvals (and in one case, Coastal Commission approval in January 2000), no development has taken place on either site and thus the examples provided are for projects that have not yet been developed and may never be built. Also, the LUP's density regulations apply to each particular parcel; thus, each proposed development should not exceed the required density standard regardless of what other residential densities have been approved for other sites. For example, typical planning and zoning standards would not permit a landowner to build a house with 100% site coverage in a zone that allows 50% site coverage because two of the property owner's neighbors had built homes that covered only 25% of the site. The maximum allowable density of 30 residential units per acre is not a requirement in the LUP, nor is it an entitlement, i.e., there is no requirement that each residential project approved along Cannery Row include a residential density of 30 units per acre. Finally, the findings for the 1997 LUP amendment (see Exhibit 7, pg. 8) note that the 183 units is an area wide maximum, as opposed to a site-specific maximum, and that specific mixed use projects will be required to conform to the 30-unit per acre density standard, as well as not exceeding a cumulative total of 183 units within the Cannery Row coastal zone.

As discussed above, the 30-unit per acre residential density regulation and the parking standards were required by the Commission to protect access to this highly visited recreational area. Nonetheless, given the small scale of this project (five units), and the fact that no residential units have yet been built towards the ultimate limit of 183 total residential units in the Cannery Row planning area, this project is not inconsistent with the basic intent of the *advisory* LUP policy for mixed-use development, and Coastal Act sections 30213, 30221, and 30222.² In addition, the parking deficiency is minimal (2 spaces) and the City did require that the applicant pay an in-lieu fee to go to supporting alternative parking and transportation management, such as the WAVE shuttle (see Exhibit 5, condition #11). Thus, the project is consistent with Coastal Act section 30252.

2. Water Supply

Section 30250 of the Coastal Act states, in part:

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources...

² In particular, it should be noted that the difference between the number of units being proposed by the applicant (5) is less than 2 additional units beyond that number actually allowed on the site per the LUP (3.3).



Section 30254 states, in part:

...Where existing or planned public works facilities can accommodate only a limited amount of new development, services to coastal dependent land use, essential public services and basic industries vital to the economic health of the region, state, or nation, public recreation, commercial recreation, and visitor-serving land uses shall not be precluded by other development.

Cannery Row LUP Development Policy 1. states:

New development is to be approved only where available supplies of water, parking, and circulation capacities are shown to exist.

The Monterey Peninsula Water Management District (MPWMD) allocates water to all of the municipalities on the Monterey Peninsula. The actual water purveyor is the California American Water Company (Cal Am). Each municipality allocates its share of the water to various categories of development, such as residential, commercial, industrial, etc. At this time, there is no water available for new residential or commercial development in the City of Monterey.

The Applicant has been placed on the City's Water Waiting List. The project, as approved by the City, would require 0.135 acre feet of water per year for the 674 square foot ground-floor commercial use and 0.840 acre feet to support 5 residential condominium units. The City of Monterey evaluates the Water Waiting List periodically and allocates water as it becomes available due to new sources or when previously approved projects do not go forward and the water from those projects is re-allocated. The City has had a water waiting list for approximately the past five years. Over that time, the waiting list has been cleared twice (personal communication with City staff).

Coastal Act Section 30250 directs development to be located in or near an area with sufficient resources to accommodate it. The residential/commercial lot is located in an area serviced by the Cal Am Water Company. The Applicant has applied and is on the City's Water Waiting List. Given that the list has cleared twice in the last five years, it is possible that the City will be able to grant the Applicant a water permit within the two-year time period of this permit. However, evidence of such a water assignment is required prior to issuance of the permit in order to comply with Section 30250. With the inclusion of Special Condition #2, which requires evidence of water availability prior to issuance of the coastal development permit, the project is consistent with Coastal Act Section 30250 regarding water supply. In the event that the permit is not issued within the next two years, and an extension is requested, the absence of a water assignment may constitute a changed circumstance in light of the water constraints in the Monterey Peninsula area.



3. Water Quality

Coastal Act Sections 30230 and 30231 protect water quality and state:

30230. *Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*

30231. *The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

LUP Natural Marine Resources and Habitat Areas Policies g and i state:

g. *Require sand traps in all parking structures to catch surface contaminants from stormwater runoff. Also require cleaning of parking areas by mechanical sweeping with minimum use of hosing to avoid water runoff.*

i. *Where any grading, excavation, demolition, or construction in conjunction with shoreline development requires temporary disturbance or permanently changes the stormwater flows/outfalls..., these disturbances or changes are to be undertaken as a condition of development in a manner that will not impair biological productivity for the habitat and restoration needs areas ...*

Water quality can be adversely affected by increased runoff due to an increase in paved/developed surfaces. The proposed project is located on the inland side of Cannery Row, within several hundred feet of the Monterey Bay National Marine Sanctuary. The project site currently consists of a grassy area with ruderal plants (see Exhibit 2). The pervious nature of the grassy area limits the amount of any polluted runoff currently. As stated above, the project consists of a new building that will house an underground parking garage, as well as residential and commercial uses. The City-approved project includes minimal setbacks to Cannery Row and Reeside Avenue, meaning that there is minimal area to allow onsite ground infiltration of runoff. In addition, the substrate along Cannery Row is primarily granitic, which does not provide a good base for infiltration. The Commission, however, has been requiring that new development maintain peak flows of runoff at the same level as the undeveloped site condition and that new development reduce urban runoff to the maximum extent feasible.

The proposed project description includes appropriate and adequate construction best management



practices (BMPs), including use of silt fencing, sediment rolls, a temporary concrete washout facility, filter fabrics or silt sacks around existing storm drains, etc. These BMPs are adequate to protect water quality during construction.

The proposed project includes an underground parking garage. According to the Applicant's engineer, the entrance to the garage will be constructed so as to minimize the amount of rainfall that will enter the garage. In addition, the proposed project includes installation of two storm drains in the underground garage to handle any minimal amount of runoff that may enter the garage. These storm drains will be fitted with filter units on the inlets to remove oil and other contaminants. Special Condition #3 requires regular maintenance of these storm drains.

The project engineer also states that runoff from the building will be directed into the existing City storm drain system. This does not meet the objective of maintaining peak flows of runoff at the same level as the undeveloped site condition. Special Condition #4 requires the installation of a low-impact design standard drainage system that maintains runoff onsite. Examples of a low-impact design include development of a rooftop garden to collect and retain rainwater onsite, or installation of cisterns to collect water that then can be reused onsite for landscaping needs, etc. With these special conditions, the proposed project is consistent with the water quality protection standards of the Coastal Act.

4. Archaeological Resources

Coastal Act Section 30244 provides protection for archaeological sites and states:

30244. *Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.*

Cannery Row LUP Development Policy k. states:

k. *Reasonable mitigations are to be required as a condition of development where it would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Office.*

The entire Cannery Row LUP planning area is designated as a high sensitivity zone in which archaeological resources are known to exist in some density and where other prehistoric sites are likely to occur (see Exhibit 4). An archaeological reconnaissance report, based on a background records search and a field reconnaissance of the project area, was completed. The report concluded that the proposed project site is immediately adjacent to a specific site that may contain potentially significant archaeological resources below the disturbed surface and imported fill. The proposed project will involve excavation of a partial basement garage and may expose and disturb native soil that may lie beneath the surface fill. The archaeological report made several recommendations, which were incorporated verbatim into the City's Conditions of Approval (see Exhibit 5, #7-8). These conditions include requiring a qualified archaeological monitor on site during excavation activities, as well as the cessation of construction activities within 150 feet of any unearched prehistoric or historic



archaeological resources until a qualified professional archaeologist evaluates the find and formulates and implements appropriate mitigation measures. These conditions provide adequate protection for any found archaeological resources and thus the proposed project is consistent with Coastal Act Section 30244.

D. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. This staff report has discussed the relevant coastal resource issues with the proposal, and has recommended appropriate mitigations to address adverse impacts to said resources. Accordingly, the project is being approved subject to conditions that implement the mitigating actions required of the Applicant by the Commission (see Special Conditions). As such, the Commission finds that only as modified and conditioned by this permit will the proposed project not have any significant adverse effects on the environment within the meaning of CEQA.

